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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-119
Elimination of Part 41 Telegraph and	)	
Telephone Franks	)	

COMMENTS OF BELLSOUTH

BellSouth Corporation, on behalf of itself and its subsidiaries, hereby comments in response to the Notice of Proposed Rulemaking ("Notice"), FCC 98-152, released July 21, 1998, in the captioned proceeding.

The Notice proposes to eliminate Part 41 of the Commission's Rules in its entirety.[1] Part 41 was adopted in 1935 to implement Section 210(a) of the Communications Act of 1934. That section provides:

> (a) Nothing in this chapter or in any other provision of law shall be construed to prohibit common carriers from issuing or giving franks to, or exchanging franks with each other for the use of, their officers, agents, employees, and their families, or, subject to such rules as the Commission may prescribe, from issuing, giving, or exchanging franks and passes to or with other common carriers not subject to the provisions of this chapter, for the use of their officers, agents, employees, and their families. The term "employees", as used in this section, shall include furloughed, pensioned, and superannuated employees.[2]

The Part 41 rules require carriers that issue "franks" to maintain detailed records to enable the Commission to identify and evaluate each frank granted, and to produce reports on such franks at the Commission's request.[3] The Part 41 Rules also implement

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[1] 47 C.F.R. § 41.1 *et seq.*
[2] The term "frank" is defined in the Commission's rules as "any authority which authorizes free, or partially free, service. 47 C.F.R. § 41.1(a).
[3] 47 C.F.R. § 41.31.

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the proviso in Section 201(b) that permits common carriers to furnish reports of positions of ships at sea to newspapers of general circulation either at a nominal charge or without charge. Section 210(a) and Section 201(b) were necessary to authorize "a *per se* class of lawful preferences that otherwise might be prohibited as unlawful pursuant to Section 202(a)."[4]

Section 11 of the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. § 161, requires the Commission to review all of its regulations every other year and to eliminate any such regulation that is no longer necessary in the public interest. The Commission has tentatively concluded in the Notice that the Part 41 rules "reflect the regulation – and, derivatively, the market structure and competitive realities – of a bygone era and are long overdue for elimination."[5] BellSouth concurs.

The concerns that gave rise to the Part 41 Rules, that franks might be used excessively or for anticompetitive purposes, have long since disappeared. With the elimination of *de jure* franchised monopolies following passage of the 1996 Act, it is highly unlikely that a carrier would provide franks to the officers, agents or employees of another competing or potentially competing carrier.

The Notice asks whether there is any reason to retain franking regulation for interstate access services.[6] There clearly is not. The interstate access market is already competitive, and such competition can be expected to grow exponentially following passage of the 1996 Act. The likelihood that an access service provider would issue franks for the benefit of the officers, agents or employees of its access service customer is

[4] Notice, ¶ 3.
[5] Notice, ¶ 9.
[6] Notice, ¶ 18.

so remote that the Commission is justified in adopting its tentative conclusion that the "Part 41 requirements are unnecessary to prevent any conceivable anticompetitive abuses."[7]

BellSouth also concurs with the requirement in the Notice that any commenter favoring retention of some form of regulation suggest alternatives that are less burdensome than those currently set out in the Part 41 Rules, and provide a cost-benefit analysis supporting its proposal. It is clear that some parties support regulation for regulation's sake (so long as it does not apply to its own operations). The Notice properly puts the burden of supporting continued regulation on the parties advocating such regulation.

BellSouth strongly supports the statement in the Notice that the Commission "will not maintain a regulation pursuant to the section 11 public interest analysis where we determine that the costs of the regulation exceeds the benefits."[8] This is an appropriate litmus test that the Commission should apply in this and all other Section 11 Biennial Regulatory Reviews. Any regulation that cannot meet the standard of producing more benefit than cost cannot possibly serve the public interest.

Respectfully submitted,

BELLSOUTH CORPORATION
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August 31, 1998

[7] Notice, ¶ 18.
[8] Notice, ¶ 20.

CERTIFICATE OF SERVICE

I hereby certify that I have this 31sth day of August, 1998, served all parties to this action with a copy of the foregoing COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the following parties:

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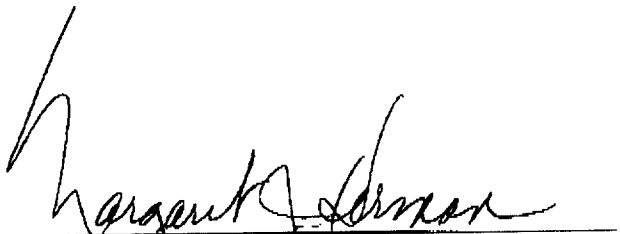

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** VIA HAND DELIVERY